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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,999	09/11/2003	Milton Bernard Hollander		4653

7590 05/26/2004
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EXAMINER	
JAGAN, MIRELLYS	
ART UNIT	PAPER NUMBER
2859	

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/659,999

Applicant(s)

HOLLANDER ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 67 and 69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 67 and 69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimers filed on 12/16/03 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patents 6,540,398 and 5,368,392 have been reviewed and are accepted. The terminal disclaimers have been recorded.

Specification

2. The disclosure is objected to because of the following informalities:

In paragraph [0001] of the specification, "pending" should be deleted from lines 1 and 9; -- now U.S. Patent 6,659, 639,-- should be added after "September 2002," in line 2; --,now U.S. Patent 5,823,678,-- should be added after "December 1996" in line 10; and --, now U.S. Patent 5,727,880,-- should be added after "March 1996" in line 11. Appropriate correction is required.

3. The amendment filed 9/11/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The light intensity distribution including a "0 order spot" at the center, and the optical means being a "diffraction beam splitter" (see page 7). The original disclosure states that there is a spot in the center of the display, but fails to teach a '0 order' center spot. Furthermore, the original disclosure discloses that the optical means is a beam splitter, or a diffraction device such

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as a grating or holographic component, but does not disclose the optical means being a 'diffraction beam splitter'. Applicant is required to cancel the new matter in the reply to this Office action.

Furthermore, it is not clear whether line 15 of page 6 has been amended or if there is a typographical error.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 67 and 69 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent 5,368,392 [hereinafter the '392 patent] in view of claim 1 of U.S. Patent 6,341,891 [hereinafter the '891 patent].

Claim 13 of the '392 patent claims a laser sighting device (i.e., a laser aiming system) for use in conjunction with a radiometer (which is a radiation detector) for visibly outlining the energy zone on a surface whose temperature is to be measured by the radiometer. The laser sighting device cooperates with the radiometer and emits more than two laser beams against the

surface (which forms a light intensity distribution pattern of laser light spots). The laser sighting device uses a splitter (which is an optical means) that receives (is illuminated by) a laser beam and splits the laser beam into the more than two laser beams (each beam forming a separate spot) and positions the more than two laser beams about the energy zone to visibly outline the periphery of the energy zone and field of view of the radiometer.

Claim 13 does not claim the more than two laser beams being divergent and forming a ring pattern to outline the edge of the field of view.

Claim 1 of the '891 patent claims a method of measuring temperature by using a radiometer and a laser aiming device for identifying the energy zone on a surface measured by the radiometer. The method splits a single laser beam into more than two divergent laser beams and projects them towards the surface, and includes means for pulsing the beams on and off synchronously.

Referring to claim 67, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify claim 13 by claiming that the more than two laser beams are divergent, as claimed in claim 1, since claim 1 teaches that providing divergent laser beams is useful for indicating an energy zone to be measured by a radiometer.

Referring to claim 69, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify claim 13/claim 1 by claiming that the beams form a ring that outlines the edge of the zone, since the 'periphery' of the energy zone that is visibly outlined on the surface form a ring that outlines the edge of the zone from which temperature is measured by the radiometer.

6. Claims 67 and 69 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 67 of copending Application No. 10/462,936.

Claim 67 of the copending application claims a device comprising a radiation detector having a field of view in combination with a laser sighting system comprising a laser and a beam splitter that emits more than two divergent laser beams. The divergent means are displayed as visible light spots onto a target surface (measurement surface area) to visibly indicate the edge of the field of view of the detector.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

7. Claims 67 and 69 would be allowable upon the filing of a terminal disclaimer in compliance with 37 CFR 1.321(c).

The examiner's statement of reasons for the indication of allowable subject matter is stated in the Office action dated 3/29/04.

Response to Arguments

8. Applicant's arguments with respect to claims 67 and 69 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following publications disclose optical devices:

Teledyne Brown Engineering, 'Multibeam Splitters' (flyer), circa 1994.

Teledyne Brown Engineering, "Diffractive-Optic Gratings", Photonics Spectra, September 1994, p.186.

Lasiris Holographie, "Diffraction Gratings", Photonics Spectra, August 1990, p.156.

Lasiris Holographie, "Beamsplitter Gratings", Photonics Spectra, June 1991, p.194, 198.

Photonics Spectra, Circle No. 356, March 1992, p.203.


Photonics Spectra, Circle No. 84, August 1992, p.76.

Photonics Spectra, Circle No. 79, February 1993, p.158.

Photonics Spectra, Circle No. 74, January 1994, p.170.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 9AM to 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Diego Gutierrez
Supervisory Patent Examiner
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